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ABSTRACT

This document presents the initial decision concerning a federal compliance review of the Chicago Public School District #299, the Illinois Office of Education, and the City of Chicago, Illinois. These proceedings try to determine if the school district under consideration was complying with Title VI of the 1964 Civil Rights Act. Violations of Title VI were found in the following areas: 1) the school district failed to take the necessary steps to open its instructional program to its English-limited students, 2) the school district's assessment and identification efforts restricted non or limited English speaking children from enjoying the benefits of the school district's educational programs, 3) the schooldistrict did not address the needs of approximately 31,000 non or limited English speaking children enrolled in the school district, 4) the school district assigned teachers and professional staff to certain schools on the basis of race, 5) the school district was not in compliance with Title VI of the 1964 Civil Rights Act in regard to its teacher and professional staff assignments and delivery of equal educational opportunities to non or limited-English speaking minority school children. Title VI, its implementing regulations, guidelines and effectualing policies are a result of Lau V. Nichols, 414 U.S. 563, 568 (1974). As a result of these proceedings federal financial assistance administered by the Department of Health, Education and Welfare has been terminated. (Author/AM)

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ADMINISTRATIVE PROCEEDING
IN THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL SCIENCE FOUNDATION
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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Review... (Civil Rights)

In the Matter of CHICAGO PUBLIC SCHOOL DISTRICT #299 (Hereinafter called "School District") and ILLINOIS OFFICE OF EDUCATION (Hereinafter called "State Agency") and CITY OF CHICAGO, ILLINOIS (Hereinafter called "City")	DOCKET NO. S-120 PROCEEDING UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 INITIAL DECISION

UD016831

PROCEDURAL HISTORY

This proceeding arises under Section 602 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1 (Title VI).

On March 23, 1972, the Chicago Public School District #299 (hereinafter called "School District") submitted to the Department of Health, Education and Welfare (hereinafter called "Department") an "Assurance of Compliance with the Department of Health, Education and Welfare Regulation under Title VI of the Civil Rights Act of 1964." Such assurances are mandated under 45 C.F.R. § 80.4 as a condition precedent to approval and extension of any Federal financial assistance. § 80.4 (c) states in pertinent part:

> Every application for Federal financial assistance to carry out a program to which this part applies.... shall....be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part."

Pursuant to 45 C.F.R. § 80.7, the "responsible Department official" initiated a compliance review of the Respondent School District in 1974 to determine whether it was complying with Title VI requirements. (Affidavits of Kenneth Mines, and Alanson J. Sumner) The School District was notified by letter from Martin Gerry, Director of the Office for Civil Rights (hereinafter called "OCR"), dated October 6, 1975, that it was in violation of Title VI as to the issues of faculty and professional staff assignment and special bilingual instructional staff assignment and special bilingual instructional services.

On April 9, 1976, a Notice of Opportunity for Hearing (Docket No. S-120) was filed by the Department wherein Respondents School District and Illinois Office of Education (hereinafter called "State Agency") were notified that they would be given an opportunity to be heard concerning the allegations of noncompliance with Title VI. Issue was joined thereafter and the Respondents requested a hearing before a duly appointed Administrative Law Judge.

On July 30, 1976, the Department of Housing and Urban Development (hereinafter called "HUD") filed a Notice of Opportunity to Request a Hearing (Docket No. 77-1) wherein Respondents School District and City of Chicago (hereinafter called "City") were notified that they would be given an opportunity to be heard concerning allegations of noncompliance with Title VI. On August 18, 1976, the Department submitted a Motion to Join and Consolidate Administrative Proceedings.[1] The proceedings S-120 and 77-1 were consolidated by Order of the undersigned on September 9, 1976, pursuant to 45 C.F.R. §§ 80.9 (e) and 81.55 and 24 C.F.R. § 1.9 (e) and 2.55.

1. The Department of Housing and Urban Development assigned all responsibilities under 24 C.F.R. Part 1 relating to all actions for "securing voluntary compliance or related or investigations, compliance reviews, complaints, determinations of apparent failure to comply and resolutions of matters by informal means" concerning elementary and secondary schools to the Department on May 25, 1966. 35 Fed. Reg. 3233 (1967).

Upon completion of all pre-trial matters, a hearing date was set for October 13, 1976. In open court on October 13, 1976, the Respondent School District submitted written Notice of Waiver of hearing. Respondents State Agency and City orally supported the Notice. The Department acknowledged the Respondents' right to waive their participation in a hearing and moved the Administrative Law Judge to proceed with a limited unilateral hearing to receive oral testimony from its witnesses. The Court requested written briefs on the matter. On October 27, 1976, the Respondents' Motion (or Notice) for waiver of hearing was granted and the Department's Motion to proceed with a limited unilateral hearing was denied. The Court recognized that the right to a hearing belongs to the Respondent(s) and may be waived by the Respondent(s). 45 C.F.R. § 80.8 (c), 80.9 (a) and 81.72 (b). The Department's right to present its case to the fullest was also recognized. The parties were then given a reasonable period of time to submit "any and all affidavits and depositions to clarify and supplement the record." (Order dated October 27, 1976, at 2).

The record for decision was closed on January 31, 1977.

ISSUES

1. Is the School District in violation of Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d et. seq.) as a result of its policies and practices relating to lingual instruction of students whose first language is other than English? This will depend upon whether the School District provides adequate lihgual instruction to a significant portion of the national origin minority students whose first language is other than English and who require special lingual instruction in order to meaningfully participate in the educational process.

2. Is the School District in violation of Title VI of the 1964 Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) with regard to its practices and policies of faculty and professional staff assignment?

3. Has the Department made valid efforts or attempts to secure voluntary compliance?

4. If the School District is not fulfilling its Title VI obligations and valid efforts or attempts to secure voluntary compliance have been made by the Department, what, if any, forms of Federal financial assistance should be terminated?

APPLICABLE LAWS AND REGULATIONS

Statutes

Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-6 (1964).

Regulations

45 C.F.R. §§ 80.1-81.121

Cases (United States Supreme Court)

Village of Arlington Heights v. Met. Hous. Dev. Corp., 97 S.Ct. 555 (1977)

Austin Independent School District v. United States, 97 S.Ct. 517 (1976)

Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040 (1976)

Milliken v. Bradley, 418 U.S. 717 (1974)

Lau v. Nichols, 414 U.S. 563 (1974)

Keyes v. School District No. 1, 413 U.S. 189 (1973)

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971)

Brown v. Board of Education, Topeka, 347 U.S. 483 (1954)

INTRODUCTION

The Respondent Board of Education of the City of Chicago is a body politic and corporate organized and existing under the Illinois School Code (Ill. Rev. Stat. Ch. 122, § 34-1 et. seq.). Its boundaries of jurisdiction are coterminous with the boundaries of the City of Chicago. The General Superintendent of the School District and the Board of Education are charged with the responsibility of operating the public school system of the City of Chicago.

The Respondents Illinois Office of Education (hereinafter called "State Agency") and the City of Chicago (hereinafter called "City") are conduits through which Federal funds flow from the Department of Health, Education and Welfare and the Department of Housing and Urban Development to the School District.[2]

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2. The Illinois of Education is an agency of the Government of the State of Illinois which is vested with responsibility for supervising the policy of and maintaining the systems of public elementary and secondary education which are operated by school districts in the state. In addition, it is the agency which receives, administers, and disburses funds granted to the state by agencies of the United States Government for educational purposes under various federal statutory grant programs administered by the Department and other federal agencies. The City of Chicago is a body corporate organized and existing under the laws of the state of Illinois and is the agency of local government eligible to receive, administer, obligate and disburse funds granted by the Department of Housing and Urban Development and other federal agencies under various federal statutory grant programs.

ANALYSIS OF THE CASE

A. LINGUAL INSTRUCTION

The Chicago Public School District #299 (hereinafter called "School District") is a recipient of Federal funds. As a recipient of such funds, the School District has a statutory and contractual agreement with the Federal Government to fulfill certain obligations to non- or limited-English speaking national origin minority students. These obligations flow from Title VI, its implementing regulations, guidelines and effectuating policies. Lau v. Nichols, 414 U.S. 563, 568 (1974).

In 1970, the Department of Health, Education and Welfare issued a policy statement (35 Fed. Reg. 11595 (1970))as to the responsibilities of school officials with respect to language handicapped national origin minority children. It provides in pertinent part:

> Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to students.

The Secretary promulgated Regulations in this regard. 45 C.F.R § 80.3 (b) (2) states in part that discrimination is barred which has: "the effect of defeating or substantially impairing the accomplishment of the objectives of the programs as respect(s) individuals of a particular race, color, or national origin."

Furthermore, § 80.3 (b) (1) (iv) of the Regulations requires that recipients of Federal assistance may not: "Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program."

In 1974, the United States Supreme Court addressed the issue of whether a school district has the affirmative duty to provide lingual instruction to national origin minority students whose first language is other than English and who require special lingual instruction in order to participate in the educational process. Lau v. Nichols, 414 U.S. 563 (1974). The District Court had found that 2,856 students of Chinese ancestry were in the San Francisco, California, school system and did not speak English. Of those that had that language deficiency, about 1,000 were given supplemental courses in the English language; approximately 1,800 were not receiving any special lingual services. The Supreme Court was not asked to fashion a specific remedy, rather the issue of affirmative duties on the part of the school system to address the lingual problem was at hand. The Court cited § 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title VI regulations, and the guidelines mentioned above with approval. The Court reasoned that basic English skills are at the very core of what public schools teach; hence, when students do not understand English, they undoubtedly will find their classroom experiences wholly incomprehensible and without meaning. 414 U.S. at 566. Accordingly, the case was remanded for the formulation of appropriate relief.

It is now an unlawful practice for a school district, which is a recipient of Federal funds, to fail to take affirmative steps to eliminate the barriers to full benefit of the educational programs faced by non- or limited-English speaking national origin minority children. 414 U.S. at 568, 571.

Also, in 1974 the Tenth Circuit Court of Appeals addressed the lingual issue in Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974). In this case, the city of Portales, New Mexico, had a substantial number of Spanish surnamed residents. A significant number of students attending the Portales public schools were Spanish surnamed and knew very little English upon entering the school system. Expert testimonial evidence revealed that the Spanish language and culture were almost totally rejected in the school system. The language handicapped children were underachievers, and many times withdrawn, nonparticipating, and without a positive self-image. In response to community and legal pressures, the school district instituted a plan to provide limited bilingual instruction and ethnic study courses. The Tenth Circuit relied extensively on Title VI, its implementing regulations, guidelines, and Lau v. Nichols, supra, and concluded that the school district was not in compliance with Title VI because the school curriculum had the effect of discriminating against non- or limited-English speaking national origin minority students. It further stated that the remedy fashioned by the school district was inadequate and "only a token plan that would not benefit appellees." 499 F.2d at 1154. The Court concluded by highlighting Mr. Justice Blackmun's concurring opinion in Lau; Justice Blackmun stated that numbers are at the heart of this type of case and only when a substantial group is being deprived of a meaningful education will a Title VI violation exist. Lau v. Nichols, 414 U.S. at 572.

On December 30, 1975, the United States District Court, District of Colorado, addressed itself to a class action in which Title VI and the Lau standards were again at issue. Otero v. Mesa County Valley School District, 408 F.Supp. 162 (D. Colo. 1975). The Court found that the school district had administered a fair test to the students to determine

whether a language deficiency existed. From its test, the Mesa County Valley School District determined that "very, very few children understood Spanish"; .0127% were found to be Spanish dominant, .0080% were found to be essentially bilingual and .0064% were found to be Spanish proficient. 408 F. Supp. at 165, 166. Thus very few national origin minority school children had a language deficiency. Accordingly, the District Court determined that no Title VI violation existed.

In the case at hand, the Department of Health, Education and Welfare contends that the School District has failed to take the "affirmative steps necessary to open its instructional program" to its non- or limited-Enlish speaking minority children in violation of Lau v. Nichols, 414 U.S. 560 (1974); Title VI of the Civil Rights Act of 1964; its implementing regulations, 45 C.F.R Part 80; guidelines and interpretations effectuating Title VI, including 35 Fed. Reg. 11595 (1970) and the "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols, Summer 1975.[3]

The evidence is voluminous. The development and preparation needed for this case has been indeed enormous. With several hundred exhibits, thousands of pages of affidavits, depositions, admissions of fact, discovery, briefs and position statements, a recital or summary of the relevant evidence is virtually impossible.

3. The "Task Force" report, in essence, covers nine topics: 1) identification of students' primary or home language; 2) diagnostic/prescriptive approach (assessment); 3) educational program selection; 4) required and selective courses; 5) teacher requirements; 6) racial/ethnic isolation and/or identifiability of schools and classes; 7) notification to parents of students whose primary language or home language is other than English; 8) evaluation; and 9) definition of terms.

In January 1975, the School District received a form OS-53-74, which was designed to ascertain whether or not a district is in compliance with Title VI regarding national origin-minority children (Affidavit of Alanson J. Sumner at 9). It is uncontradicted that the School District had conducted a survey of students whose first language was other than English in September, 1974 (Exhibit A-10, Affidavit of Alanson J. Sumner at 15). Dr. Joan Raymond, an employee of the School District assured the Department that the survey data was accurate, complete, and methodologically sound and could be accurately transposed onto the OS-53-74 form. The Department acquiesed. Alanson J. Sumner, Director of New Programs for the Office of Civil Rights, Region V, analyzed the OS-53-74 form and reported that the School District's own survey showed that 6,206 students who spoke little or no English were not attending schools that had special language programs.[4] (Affidavit of Alanson J. Sumner at 19, see also, First Admissions and Response, 175).

The Department further contends that the School District's September 1974 survey does not reveal all national origin minority students who are not receiving special language assistance. Ms. Mary Jane Cross in her affidavit mentioned four documents,[5] which address the subject of how many non- or limited-English speaking students are in need of special

4. Mr. Sumner was referring to schools that offered neither English as a second language (ESL) nor bilingual education. ESL refers to an approach to teaching non- or limited-English speakers the English language. In the School District, ESL often involves an audiolingual method of instruction; that is, the teacher says something in English and the student is asked to repeat the phrase. Bilingual education means education in two languages. The language handicapped child is provided with educational experiences in both the home and English language in all substantive subjects.

5. The four documents examined by Ms. Cross in this connection were: 1) The Survey of Pupils with English Language Difficulties Due to Non-English Background conducted on September 30, 1976 (Exhibit A-10); 2) a January 12, 1976 Audit of the September 30, 1974 Survey conducted by the District at a sample of 31 schools (Exhibit A-146); 3) A Survey of Pupils with Language Difficulties due to Non-English Backgrounds conducted on March 17, 1976 (Exhibit B-33); and 4) The 1975-1976 Bureau of Special Language and Bilingual Program Needs Survey for Bilingual Education (Exhibit A-143).

services, and three documents[6] which address the subject of how many non- or limited-English speaking students are actually receiving bilingual or English as a second language (ESL) services. The correlation of these seven documents revealed approximately 31,000 non- or limited-English speaking national origin minority children who receive neither bilingual education nor ESL training. (Affidavit Mary Jane Cross at 15).

The Department therefore contends that the School District is in violation of Title VI because of its failure to service a substantial number of language handicapped children.

The Department further contends that the School District has failed to adequately identify and assess its national origin minority students, and thus is in violation of Title VI.

Dr. Edward A. DeAvila, Director of Research and Educational Planning for a non-profit television production company, and expert affiant on behalf of the Department, defined "identification" as a standardized formal procedure for locating children with language handicaps by age, grade, and name. Dr. DeAvila stated that "assessment" means diagnosing the linguistic abilities and characteristics of children in such a way that the results have some direct classroom bearing on how they are treated. (Affidavit of Dr. DeAvila at 9). Both Dr. DeAvila and Dr. Josue M. Gonzalez, Associate Professor of Education, Director of Chicano Studies, Southern Methodist University past Director of the Institute for Bicultural Education, Chicago State University and expert affiant on behalf of the Department, contend that without adequate identification and assessment procedures, a school system cannot accurately allocate its resources or determine the needs of the children.

6. The three documents examined by Ms. Cross in this connection were: 1) The Second Interim Report which identifies those schools receiving funding for ESL or bilingual education for the 1974-1975 school year (Exhibit A-12); 2) The January 1976 Audit (Exhibit A-146); and 3) The Bureau of Special Language and Bilingual Needs Survey for Bilingual Education (Exhibit A-143).

The Department's expert affiants concluded, after a review of the relevant portions of the record, that the School District's identification and assessment procedures have been inadequate.[7] (See Affidavits of Doctors DeAvila, Gonzalez, and Shuy). The September 1974 survey was found, by the expert affiants, to be deficient because: (1) the School District provided no identification or assessment training to the teachers; (2) different teachers had different bases for rating students; (3) the definitions for the various levels of language proficiency were very vague and insufficient to guide the classroom evaluators; (4) the survey sought to classify students through assessment of linguistic structures without adequate specification as to what should be the linguistic structures of each level; (5) no consideration was given to the developmental age differences in linguistic structures; (6) monolingual teachers were assessing the linguistic function of non- or limited-English speaking children; and (7) the survey results were not correlated with the results of any other data gathering instrument, hence the survey design did not validate the results. Dr. DeAvila stated in summary:

> I would conclude that the language survey conducted on September 30, 1974, in its most important sense, produced highly questionable results. We have no sure way of judging whether it has produced an overcount, undercount or confusion between the levels of identification. Since the teachers or other raters (by virtue of their ~~own~~ monolingualism) had no formal way of knowing whether or not the children spoke another language as they might in the home, I fear that the Survey probably undercounts rather than overcounts. (Affidavit of Dr. DeAvila at 16).

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7. See Affidavit of Alanson J. Sumner at 56-59.

The January 12, 1976 audit was also reviewed by Dr. DeAvila, who stated: "All of the criticisms that I have indicated vis-a-vis the 1974 survey also apply to the audit since the same basic instrumentation was used and the same procedure followed. Due to the amount of instability or the unreliability of the first survey, it is no small wonder that there was a lack of agreement between the original survey and the audit, as to the number of children in need." (Affidavit of Dr. DeAvila at 16). Again, Dr. DeAvila speculated that the School District undercounted the children in need of special lingual services.

The School District re-surveyed the student population on March 17, 1976. Again, the Department's expert affiants reviewed the relevant evidence and concluded that the survey did not accomplish its stated purpose. Among the defects noted in this survey by the expert affiants were: (1) no information exists as to whether the evaluating teachers made use of bilingual consultants (Second Admissions and Responses at 199); (2) the definitions for levels of English language functioning lacked content validity and were not standardized; (3) the videotape which was prepared by the School District to assist the classroom evaluators did not clarify the confusions and inconsistencies in the definitions of the various levels; (4) the videotapes compounded the confusion between definitions of levels III and IV; (5) the videotapes dealt only with students whose first language was Spanish; and (6) the survey did not gather data on individual children which would assist classroom teachers in designing instructional programs to meet their particular needs. Dr. Roger W. Shuy, Professor of Linguistics at Georgetown

University, and expert affiant on behalf of the Department, concluded that there were three areas of great danger in the March 17, 1976 survey: (1) misdiagnosed children; (2) dysfunctional categories and (3) special services. In his opinion, none of the surveys and audit accurately identified or assessed the levels of ability of language handicapped children to use the English language. (Affidavit of Dr. Shuy at 5)

The School District, on the otherhand, contends that its policies and practices in regard to their lingual educational programs for non- or limited-English speaking national origin minority children are squarely in compliance with Title VI. Its contention is that: (1) hundreds of bilingual teachers have recently been assigned in the Chicago Public Schools to provide bilingual services to students; (2) the Respondent Board is acting in good faith to deliver proper lingual instructional services to non- or limited-English speaking national origin minority students; (3) the March 17, 1976 survey accurately assesses and identifies language handicapped students; (4) instructional services are provided to non- or limited-English speaking national origin minority students not in bilingual or ESL programs by classroom teachers, additional resource teachers, enrichment teachers, adjustment teachers, adjustment/counselor teachers, and special reading teachers (auxiliary and supportive services); (5) the School District is in compliance with state law and rules; and (6) the February 1976 plan to provide special services to national origin minority children and the School District's subsequent affirmative actions negate any inference of purposeful intentional segregative intent of any kind.

In spite of adequate opportunity to submit affidavits and depositions to supplement and clarify its position, the School District has opted not to submit any such documents. The undersigned is perplexed as to the motives of the School District in not offering any "testimonial type" evidence.

This case presents a clear picture to the undersigned. The Department has endeavored to develop a voluminous and complete record, while the School District has chosen to rest on its 62 exhibits. Virtually all of the analyses, correlations, interpretations and opinions as to the given base data have been submitted by the Department.

In this light, the undersigned believes that the record firmly establishes that the School District has failed to take the "affirmative steps necessary to open its instructional program" to its non- or limited-English speaking national origin minority children in violation of Title VI of the 1964 Civil Rights Act; Lau v. Nichols, 414 U.S. 560 (1974); Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974); 35 Fed. Reg. 11595 (1970); and "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols, Summer 1975". [8]

The School District has failed to adequately identify and assess its non- or limited-English speaking national origin minority students. It is clear that without proper identification and assessment procedures, students in need of special instruction cannot be discovered and classroom resources cannot be properly allocated. The Department's expert affiants, Doctors DeAvila, Gonzalez, and Shuy stated forcefully and without hesitation that the School District's

8. The Department's eyewitnesses state that the vast majority of children who do not receive adequate lingual instruction generally: 1) lose enthusiasm for education; 2) acquire a substantial sense of frustration that impairs his/her ability to function in the classroom; 3) suffer a loss of confidence and/or self-esteem; and 4) withdraw from the instructional process. (Affidavits of Cerda, Claudio, Hibino, Kim, Kurukazu, Martinez, Moy, Ramirez, and Rodriguez).

past surveys and audit were inherently deficient in numerous ways. The School District did not submit any evidence from any expert affiant which would support its contention that the surveys and audit were reliable. For these reasons, the School District cannot be found to be in compliance with Title VI as to its affirmative duty to provide adequate lingual instruction.

The Department has also correlated data provided by the School District which establishes that approximately 31,000 students in need of special language instruction are not presently receiving such instruction.[9] The School District stated in its brief that it had recently hired, transferred or assigned hundreds of bilingual teachers to provide bilingual services to its students and that auxiliary and supportive instructors have been provided for language handicapped children who are not receiving either ESL or bilingual education.

The School District's position that it has assigned, hired or transferred bilingual teachers to provide bilingual services is a mere assertion of fact without underlying support. The School District must realize that mere unsubstantiated facts cannot be ascribed probative weight in either administrative, civil or criminal actions. The Respondent was given approximately 3 weeks to submit supporting affidavits and depositions on any relevant point. As mentioned earlier, it failed to so act. Therefore, the undersigned can assign no significant degree of probative weight to these unsubstantiated allegations of fact.

9. It should be noted, that by analyzing the September 1974 Survey, only, 6,206 students were identified who spoke little or no English and were attending schools where neither bilingual education or ESL was offered. See note 4 supra and accompanying text.

The School District's assertion that it is providing auxiliary and supportive services to students not receiving ESL or bilingual instruction, and therefore is in compliance with Title VI, must likewise be rejected. In Serna v. Portales Municipal Schools, supra, the Tenth Circuit found that partial services were inadequate to demonstrate compliance with Title VI. 499 F.2d at 1154. In the instant case, the Department's expert affiants reviewed all relevant evidence and found no indication that special services were being provided by classroom teachers, resource teachers or special teachers for subjects such as speech or reading. (Affidavit of Dr. Shuy at 13). Dr. Shuy, a noted expert, stated in pertinent part:

> There is, in fact, nothing in these documents to indicate exactly what is being offered but, based on my understanding of what sorts of things such special or resource instructors do in other school systems, it is not likely that the sort of service required for children with limited English abilities will be provided by such instructors. Neither the training nor the work of such teachers is specifically addressed to the issues of language differences. Their focus is on children with learning deficits, with special learning ability problems or with psychological or neurological handicaps. Children with limited English speaking ability suffer no more from such problems than do any other children. Seldom are such teachers trained in language problems, per se, especially in any crosscultural way and this is the major need of children with limited English speaking ability. When the Chicago Public Schools say that they are providing service for such children with such programs, it is likely to be in error. Such children will probably continue to be untreated. (Affidavit of Dr. Shuy at 13)

Dr. Gonzalez, also a noted expert, observed that the Respondent has not explained the nature and extent of the services offered by these teachers (Affidavit of Dr. Gonzalez at 13). The undersigned is in complete agreement with the Department's expert affiants; no evidence has been presented to show the nature of the special services, the number of students receiving these services, the location of non- or limited-English speaking national origin minority children who are receiving such services, and the number of teachers

involved in the program (Affidavit of Alanson J. Sumner at 23-25; Department's Motion for Order Directing Responsive Reply to Discovery Nos. 6 and 7 and Responsive Reply to Department's Motion of July 27, 1976 for Discovery Nos. 6 and 7; Second Admission and Response, 187; and Department's Motion for Order Directing Responsive Reply to Discovery of August 15, 1976, No. 6). Accordingly, the undersigned does not agree with the School District that its auxiliary and supportive services are adequate and within the ambit of the Lau v. Nichols mandate. The Respondent is providing lingual services to some non- or limited-English speaking children; however, it is clear that the policies and practices of the Respondent are clearly inadequate and fail to provide, on the whole, non- or limited-English speaking national origin minority children with a meaningful education.

The Respondent contends that its February 1976 plan and subsequent affirmative actions negate any inference of purposeful intentional segregative intent. It further asserts that it is acting in good faith to provide adequate lingual instruction. In this regard, Lau v. Nichols, supra, specifically states that: "Discrimination is barred which has that effect even though no purposeful design is present: a recipient 'may not .... utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination' ...." 414 U.S. at 568. Good faith efforts, and segregative intent or purpose are not relevant in this type of matter. The effect or consequences of any action or plan is the primary and crucial question.[10] The Respondent's assertion in this regard is therefore rejected.

10. See Lau v. Nichols, 414 U.S. 563, 568 (1974); Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974); 45 C.F.R. § 80.3 (b) (2) and; 35 Fed. Reg. 11595 (1970).

Finally, the School District asserts that it is in compliance with state law and rules and therefore is in compliance with Title VI. This position is untenable, in that compliance with state law does not determine compliance with Title VI. [11]

In summary, the evidence is clear and virtually without contradiction that the School District has violated Title VI of the Civil Rights Act of 1964 by failing to adequately identify and assess its national origin minority students, failing to determine the types of services necessary to afford these children an equal opportunity to participate in the programs of the School District, and failing to deliver lingual services to a substantial number of non- or limited-English speaking national origin minority children; the School District has, in essence, restricted these children from enjoying the benefits of its educational programs.

11. No evidence has been presented to the Court which establishes that the Respondent Board is, in fact, in compliance with state law.

B. TEACHER AND PROFESSIONAL STAFF ASSIGNMENT

I.

The School District is a recipient of Federal funds. As such, it has a statutory and contractual agreement with the Federal Government to provide assurances of compliance with Title VI of the 1964 Civil Rights Act (42 U.S.C. §§ 2000d-2000d-6) and to be in compliance with Title VI.

The Department contends that the Respondent School District's policies and practices for faculty and professional staff assignment have had the natural, probable and foreseeable consequences of:

> a) creating, maintaining or aggravating the racial or ethnic identifiability of schools as intended for school children of a particular race or ethnicity; and
>
> b) providing minority group school children with teachers, regardless of race, who have lesser levels of teaching experience, educational training and teacher proficiency. Notice of Opportunity for Hearing at 18.

Thus, the Department reasons that the School District is in violation of Title VI.

The School District, on the other hand, contends that it is in compliance with Title VI as to its assignment policies and practices on the basis that:

1. the hiring and assignment policies of Respondent School District have promoted employment of minority group faculty in the Chicago Public Schools;

2. the Board of Education's stated policy of faculty integration has been implemented and no inference exists that teachers and other faculty members are assigned to the schools in a discriminatory manner;

3. the Board has spent significant sums in various programs to achieve equalization of expenditures among the different schools and its efforts have been genuinely effective in eliminating disparities that at one time existed;

4. no discrimination exists in the distribution in the "range of educational training" among the faculties of the schools.

5. no correlation has been shown to exist between racial and ethnic composition of the student body of a particular school and the level of teaching proficiency of the faculty of that particular school;

6. no correlation has been shown to exist between the racial and ethnic composition of the faculty of a particular school and the teaching proficiency of the faculty at that school; and

7. the record shows no correlation between the level of teacher experience at a particular school and the quality of educational service delivered to the students of that particular school. (Posthearing brief of School District at 35).

II.

In 1954, the Supreme Court of the United States addressed itself to the matter of state imposed segregation by race in the public schools. Brown v. Board of Education, Topeka 347 U.S. 483 (1954). The Court rejected the "separate but equal" concept in public education. It stated:

> To separate them (Negroes) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone .... 'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group ....
>
> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate but equal facilities are inherently unequal." 347 U.S. at 494-495.

In 1971, the Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), dealt extensively with the remedies available to the district court to correct de jure segregation. The Swann Court stressed that judicial powers may be exercised only on the basis of a constitutional violation and that judicial authority may enter only when the local authority defaults. In determining whether or not a constitutional violation exists, the Court first stated:

> Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff .... a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown. 402 U.S. at 18.

The Court continued by stating that there is no constitutional command that every school reflect the racial composition of the school system as a whole. However, in a system with a history of segregation and where the facts establish "white schools" or "Negro schools" merely by reference to the racial composition of the faculty and staff, the burden falls upon the school authorities "to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part." 402 U.S. at 26.

In Keyes v. School District No. 1, 413 U.S. 189 (1973), the Supreme Court for the first time dealt with school segregation in a northern and western state. Neither the State of Colorado nor the city of Denver had enacted a law or ordinance mandating separation of the races. The court, however, affirmed the District Court's finding of de jure segregation in one part of the Denver school system. The

lower court had stated:

> We do not find that the purpose here included malicious or odious intent. At the same time, it was action which was taken with knowledge of the consequences, and the consequences were not merely possible, they were substantially certain. Under such conditions the action is unquestionably willful. Keyes v. School District No. 1, 303 F. Supp. 279, 286 (D. Colo. 1969).

The Supreme Court then stated that such intentional or state imposed segregation in a portion of a district will establish a prima facie case of unlawful segregative design on the part of the school authorities and shift to those authorities the burden of proving that other segregated schools within the system are not the result of intentionally segregative actions.

The Supreme Court was again faced with school segregation in a northern and western state in Milliken v. Bradley, 418 U.S. 717 (1974). In Milliken, the Court determined that a federal court cannot impose a multi-district, area wide remedy for a single-district de jure segregation violation where there were no findings that the other school districts had failed to operate unitary school systems or that boundary lines were established with the purpose of fostering racial segregation. 418 U.S. at 748-753.

The de jure segregation mentioned above was found to exist in the Detroit, Michigan school district only. The Court adopted the District Court's analysis of the Detroit school problem:

> The District Court found that the Detroit Board of Education created and maintained optional attendance zones within Detroit neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. These zones, the court found, had the "natural, probable, foreseeable and actual effect" of allowing white pupils to escape identifiably Negro schools. 418 U.S. at 725.
>
> The record before us, voluminous as it is, contains evidence of de jure segregated conditions only in Detroit schools .... 418 U.S. at 745.

Thus, after Brown, Swann, Keyes and Milliken, two elements must be shown for a finding of actionable de jure segregation: 1) that action or failure to act by responsible school authorities in regard to problems or practices related to segregation was taken with segregative intent and 2) that the action or failure to act, has resulted in creating, continuing, or increasing the segregation which exists in the school system. The Supreme Court recognized that in northern and western states, there are seldom laws mandating a separation of the races in the schools. Hence, the court in Milliken and Keyes recognized the need to draw an inference of intent from consciously consummated actions or omissions to act taken with knowledge of the consequences. A presumption of segregative intent, arises when it is established that school authorities have engaged in acts or omissions to act, the natural, probable and forseeable consequences of which is to bring about or maintain segregation.[12]

On June 7, 1976, the Supreme Court issued the decision of Washington v. Davis, 96 S.Ct. 2040 (1976). Washington involved the validity of a qualifying test administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department. The plaintiffs alleged that the impact of the test, which failed a greater proportion of blacks than whites, was sufficient to establish a constitutional violation. The Court of Appeals for the District of Columbia Circuit held that lack of discriminatory intent in designing and administering the test was irrelevant; it reasoned that the critical fact was the disproportionate

12. Many Circuits have likewise adopted the natural, probable and foreseeable consequences standard. United States v. School District of Omaha, 521 F.2d 530 (8th Cir. 1975); Hart v. Community School Board, New York District 21, 512 F.2d 37 (2d Cir. 1975); and Oliver v. Michigan State Board of Education, 508 F.2d 178 (6th Cir. 1974).

impact of the end results standing alone. The Supreme Court reversed the Court of Appeals and affirmed the District Court holding in favor of the Police Department. Mr. Justice White delivered the opinion of the Court. As to the school desegregation cases he stated:

> The school desegregation cases have also adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose. That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause. The essential element of de jure segregation is 'a current condition of segregation resulting from intentional state action .... the differentiating factor between de jure segregation and so-called de facto segregation is purpose or intent to segregate' Keyes v. School District No. 1, 413 U.S. 189, 205, 208 (1973). See also id., at 199, 211, 213. 96 S.Ct. at 2048.

Mr. Justice White further commented:

> This is not to say that the necessary discriminatory racial purpose must be express or appear on the face of the statute, or that a law's disproportionate impact is irrelevant in cases involving Constitution-based claims of racial discrimination. A statute, otherwise neutral on its face, must not be applied so as invidiously to discriminate on the basis of race. Yick Wo v. Hopkins, 118 U.S. 356 (1886). 96 S.Ct. at 2048.

He noted that an invidious discriminatory purpose can often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. 96 S.Ct. at 2040. Hence, the Supreme Court concluded that disproportionate impact is not irrelevant, nor is it the sole indicator of an invidious racial discrimination forbidden by the Constitution.

Since Washington, several discrimination cases have been decided and/or remanded by the Supreme Court in light of Washington. Austin Independent School District v. United States, 97 S.Ct. 517 (1976) involved a plan devised by the Fifth Circuit Court of Appeals to bus children "cross-town".

The Supreme Court stated that federal remedial power may be exercised only on the basis of a constitutional violation and that the nature of the violation determines the scope of the remedy. The case was remanded in light of Washington v. Davis, supra. Village of Arlington Heights v. Metropolitan Housing Development Corporation, 97 S.Ct. 555 (1977) involved a refusal by a zoning commission to rezone property to allow multiple-family housing. The plaintiffs alleged that the denial to rezone was a violation of the Equal Protection Clause in that the rezoning refusal had a racially discriminatory effect. The Supreme Court stated that proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause. In support thereof, it cited Washington v. Davis, supra. The Court stated:

> Davis does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the "dominant" or "primary" one. In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.
>
> Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. The impact of the official action--whether it 'bears more heavily on one race than another.' Washington v. Davis, 426 U.S. at 242--may provide an important starting point. Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face. Yick Wo v. Hopkins, 118 U.S. 356 (1886). 96 S.Ct. at 563-564.

Thus it is apparent that an invidious intent or purpose to discriminate, whether it be express or inferred, must be established before a finding of de jure segregation can be made. The Supreme Court has cited the Keyes v. School District No. 1, supra as consonant with its decisions in Washington, Austin, and Arlington Heights. Hence, the "natural, probable, and foreseeable consequences" test for inferring segregative intent is still viable.

III.

The Department contends in part that the School District's policies and practices for teacher and professional staff assignment have had the natural, probable and foreseeable consequences of:

> a) creating, maintaining or aggravating the racial or ethnic identifiability of schools as intended for children of a particular race or ethnicity. Notice of Opportunity for Hearing at 18.

It submitted to the Court empirical and statistical analyses of teacher-student ethnicity, and various statistical reports relating to the composition and distribution of the School District's faculties. The Department started with empirical data provided by the School District. From this data, Delta Research Corporation, and DBS Corporation, rendered a variety of data bases from which statistical analyses could be made.

The raw statistics generally show that of the schools with 0 to 10% minority student population, 15.4% of the teachers are of minority origin; of the schools with 11 to 20% minority student population, 15.6% of the teachers are of minority origin; of the schools with 21 to 79% minority student composition, 24.2% of the teachers are of minority origin; of the schools with 80 to 89% minority student composition, 34.1% of the teachers are of minority origin; and of the schools with 90 to 100% minority student population, 57.6% of the teachers are of minority origin. (Answer and Request for Hearing of Respondent Board of Education at 8-18).

The Department then set about to evaluate the data. For this purpose it hired Walter J. Hillabrant, Ph.D., Psychologist and Statistician. Dr. Hillabrant chose to evaluate the data bases by performing four statistical tests, 1) the Chi-square test of independence, 2) the Binomial test, 3) the Goodness of Fit test and 4) the Multiple Curvilinear Regression Analysis.

The Department relies quite heavily upon Dr. Hillabrant's analyses. In essence, the four tests were performed to ascertain the validity of the Department's allegations.

The Chi-square test of independence was performed by Dr. Hillabrant to "show the hypothesis or allegation that students and faculty are assigned in such a way as to promote racial identifiability of the schools." (Deposition of Dr. Hillabrant at 24). Dr. Hillabrant supervised the evaluation (Exhibit A-108) and interpreted the test results as showing that minority faculty are under-assigned or under-represented in regular elementary and high schools that have minority student enrollment of less than 95% minority. Similarly, Dr. Hillabrant concluded that minority faculty are over-assigned or over-represented in regular elementary and high schools with 95% or greater minority student composition. (Deposition of Dr. Hillabrant at 42). When asked about the probability of teacher assignments being made without reference to race, Dr. Hillabrant concluded that there was one chance in a million that assignments made between 1968 and 1975 were random and not based on race.

Dr. Hillabrant then stated that in all facility types, except middle schools, the assignment pattern of faculty and staff was similar to that found in regular elementary and high schools.

Dr. Hillabrant performed a Goodness of Fit test on each school in the system based on 1974 statistics. This test identifies schools whose faculty racial composition deviates from the district-wide racial composition. Dr. Hillabrant's evaluation revealed a significant deviation in a large number of schools.[13] (Deposition of Dr. Hillabrant at 61).

Next, Dr. Hillabrant was asked to evaluate the School District's 1971 plan to achieve faculty integration.[14] Again, as in all other statistical analyses, Dr. Hillabrant utilized data provided by the School District. He noted that in 1971, 46% of the School District's elementary schools were outside of the 75-25 plan; in 1974, 43.4% of the elementary schools were outside of the plan.

The Department's expert deponent then utilized the Binomial test to analyze school opening data.[15] The test showed a significant statistical deviation from the 25-75 plan of 1971.[16]

Dr. Hillabrant performed the final statistical evaluation, a Regression Analysis, to determine whether there was a correlation between minority enrollment and the percentage of minority faculty assigned to elementary and regular high schools. The evaluation revealed that as minority student

13. The Goodness of Fit test refutes the School District's allegation number 18 in its Answer and Request for Hearing.

14. In 1971, the School District developed a teacher assignment plan. It is commonly referred to as the "Redmond Plan" or the plan to "Integrate School Faculties and Equalize Per Pupil Costs." The plan called for a distribution of teachers such that no schools would have more than 75% minority faculty or less than 25% minority faculty.

15. The Binomial test is designed to determine if an observed frequency or percentage is significantly different from an expected frequency or percentage.

16. Exhibit A-118 reveals that 34.2% of the schools which opened in 1971 had faculties whose racial composition were outside of the 25-75% Redmond Plan, and the evidence establishes that by 1975, 46% of those schools were outside of the 25-75% Redmond Plan.

enrollment increased, minority faculty in those schools likewise increased. The Multiple Curvilinear Regression Analyses showed a strong positive correlation between the percentage of minority student enrollment and the percentage of minority faculty assigned to elementary and high schools.[17] The expert deponent concluded by stating that he could predict the racial composition of the student body of a school in Chicago based upon the ethnicity of its faculty. He stated:

> All the analyses clearly show that there is a strong relationship between the percent minority student enrollment of the schools and the percent minority faculty that are assigned to them. (Deposition of Dr. Hillabrant at 113).

The Department also submitted sworn affidavits in an effort to further show that the policies and practices of the School District have tended to create, maintain or aggravate racially identifiable faculties and staffs. Among the positions presented by the Department in support of its contention are: 1) the permissive practice of allowing teachers and principals to arrange assignments or appointments, 2) the permissive practice of heeding community pressures to exclude teachers and principals on the basis of race, 3) the permissive practice of agreeing to limitations in teachers' union bargaining agreements which restrict teacher assignment, 4) the practice of assigning minority teachers to minority schools because of discipline problems and 5) purposely limiting the opportunities of minority group teachers and principals.

On the whole, the affidavits submitted by the Department pertaining to the teacher and staff assignment issue are rather weak. The undersigned believes that cross-examination of the affiants might have generated problems for the Department. However, the School District knowingly waived its right to cross-examination and failed to submit any

17. The Multiple Regression values arrived at by Dr. Hillabrant were +.85 and +.87.

testimonial-style evidence on its behalf or in contradiction to the Department's affiants. The School District, in essence, rested its case when it waived its right to a hearing. The Department, on the otherhand, submitted numerous affidavits and depositions to clarify and supplement its position.

The Department's affiants firmly state that the School District has acted with intent and purpose to discriminate when placing black educators and staff in black schools and white educators and staff in white schools. Samuel L. Dolnick, President of the Chicago Principals' Association, and Herschel Rader, a principal of an elementary school in Chicago stated that race was a major factor in the assignment of principals prior to 1970. As a result, white schools had white principals and black schools had black principals. Misters Dolnick and Rader continued by stating that after 1970, local community councils provided input into the decision process of assigning principals; nevertheless, whites continued to be placed into white schools and blacks into black schools.

Otho M. Robinson, Ed.D., and former Assistant Superintendent of Personnel in the School District, likewise testified that race has been and still is a very important factor in the assignment of faculty and professional staff. He cited numerous instances of racial discrimination in his assignments and those of his friends. Dr. Robinson stated:

> .... we generally agreed that black persons would be sent only to black schools. What existed in assignment procedures in effect resulted in blacks working in schools that were predominantly or totally black. (Affidavit of Dr. Robinson at 4).

He further stated:

> I do not know of any instance when, in fact, black substitute teachers ever received an assignment to report to a school with predominantly white student enrollment. (Id at 3).

Mr. Dolnick stated in this regard:

> When I was principal of VonSteuben, I had occasion to go downtown to look at my transfer lists and I stopped off to say hello to one of the persons in the Personnel Department. Teacher-counselors were in their "cubbies" and I greeted one when going by who was taking pins off of the map which was used by teachers to indicate their preference of appointment. I said, 'Gee, I am glad to see that there are that many schools that are filled up,' because she had taken five or six pins out. She said, 'No, I am having some people come in and I am not going to give all the choices.' (Affidavit of Samuel Dolnick at 9).

The Department's affiants' sworn statements stand unrebutted. They trace an historical pattern of racial discrimination from the 1930's into the 1970's.[18] Furthermore, various outside investigators have concluded that the School Board's permissive practices of teacher assignment and transfer have tended to isolate schools on the basis of race. (Exhibits A-1, 2, 3).

IV.

The facts, unrebutted as they are, show beyond a shadow of a doubt that schools with a high percentage of minority students have been assigned a high percentage of minority faculty and staff and conversely that schools with a low percentage of minority students have been assigned a low percentage of minority faculty and staff. The Chi-square test of independence showed that the probability of teacher and staff assignments having been made on a racially neutral policy was one chance in a million.

The Department's affiants testified as to specific discriminatory acts and omissions perpetrated by the School Board.

The Department has presented evidence which establishes a history of purposeful segregation and the facts establish that it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of

18. In this regard see Affidavits of Charles Bournique, Timuel Black, Warren H. Bacon, Willie L. Bond, George N. Schmidt, Faith Rich, Danny Davis, Otho Robinson, Herschel Rader and Samuel Dolnick.

the teachers and staff. Thus, under Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18 (1971) and Keyes v. School District No. 1, 413 U.S. 189, 208, 209 (1973), a prima facie case of unlawful segregation stands unless rebuttal evidence from the School Board is presented that segregative intent was not among the factors motivating their actions.

The School District contends that mere racial imbalance is not a violation of the constitution or law. The undersigned firmly agrees with the School District in its analysis of the law. see Keyes v. School District No. 1, supra at 203, Swann v. Charlotte-Mecklenburg, supra at 24, Lawlor v. Board of Education, Chicago, 458 F.2d 660, 662 (7th Cir. 1972), and Northcross v. Board of Education, Memphis, 312 F.Supp. 1150, 1157 (D. Tenn. 1970). An intent or purpose to segregate must be proven for there to be actionable de jure segregation. The Supreme Court has established that intent can be inferred from the facts in certain cases. The Department has presented evidence which shows more than mere racial imbalance. The statistical analyses relate that race was a major factor in assignments. Furthermore, the affidavits establish an historical pattern of purposeful acts and omissions which fostered a separation of the races.

The School District contends that it has recently assigned hundreds of teachers and professional staff in an effort to reach a 75% - 25% racial balance. The School District, however, has not submitted any evidence to support this contention. Without some supportive or corraborating evidence, the School District's assertion is nothing more than mere unsubstantiated fact and cannot be assigned any significant degree of probative weight.

The School District also contends that it has expended considerable time, effort and money to recruit qualified minority teachers and staff. (Exhibits B-4, 5, 6, 11, 21). The School District, in good faith, has actively sought and recruited many qualified minority professionals. However, the public school faculties are still on the whole racially segregated. The hiring and recruitment policies are a separate consideration altogether from the assignment practices. The undersigned concludes that positive and constructive recruiting policies will not rebut a prima facie case of unlawful faculty segregation.

V.

It is a violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the 1964 Civil Rights Act for public school officials to promulgate educational policy decisions on the basis of race which have the ultimate effect of creating, maintaining or aggravating racial segregation in the public schools.

In many school desegregation cases, the alleged constitutional violation stems from a school board's practices and policies in regard to student assignment. cf. Milliken, Keyes, Austin. In these cases, a number of important independent factors have been given considerable weight by the courts, e.g., the housing patterns of the city, neighborhood school considerations, and the health and well-being of children being bussed cross-town. In the instant matter, we are concerned solely with the assignment of teachers and professional staff. The assignment of these professionals is subject to the complete control of the School District. In the assignment of teachers and professional staff, there are no extrinsic factors such as residential segregation or natural barriers to transportation to contend with.

In conclusion, the cumulative effect of the purposeful actions and omissions of the Chicago public school officials has been to isolate black administrators, black teachers and black students in a limited number of schools and increasingly to isolate a number of schools with almost exclusively white administrators, white teachers and white students. The School District has not presented any convincing evidence of educational justification for the segregation of the faculties. Accordingly, the School District is not in compliance with Title VI of the 1964 Civil Rights Act.

VI.

The Department further contends that the School District's policies and practices have had the natural, probable and foreseeable consequences of:

> b) providing minority group children with teachers, regardless of race, who have lesser levels of teaching-experience, educational training and teacher proficiency. Notice of Opportunity for Hearing at 18.

Again, the Department submitted statistical and documentary evidence in support of its allegation. Dr. Hillabrant testified that: (1) teachers with one to five years of experience were under-represented in schools with 100% minority student enrollment and 0 to 30% minority student enrollment; teachers with six to twelve years of experience were over-represented in schools having 95 to 100% minority

student enrollment; and (3) teachers with over twelve years of experience were generally assigned to schools having a small proportion of minority students. (Deposition of Dr. Hillabrant at 80-82). Dr. Hillabrant further stated that teachers with a Bachelor of Arts degree only, were over-represented in schools having a large percentage of minority students, while teachers with at least a Masters degree were over-represented in schools with few minority students. (Deposition of Dr. Hillabrant at 88 to 90).

It is well established in the record that Chicago's public schools are identifiable on the basis of the race of the faculty. In otherwords, minorities generally teach in non-white schools and whites generally teach in white schools. The Department alleges that teachers in schools having a large percentage of minority students are generally of lesser quality than their counterparts in white schools. In its Reply Memorandum in Joint Response to Trial Memoranda of School District and Teachers Union on July 13, 1976, the Department stated:

> The Department, as was made expressly clear in its Trial Memorandum, does not suggest that minority teachers as a rule are less capable.... The patterns do not mean that a minority teacher is less capable than a white teacher and the Department has never thought so. (Reply Memorandum at 14).

Notwithstanding the camouflaged language utilized by the Department, the inescapable plain meaning of its allegation is that minority teachers do not provide minority students with the same educational opportunities as a white teacher would. Such a proposition is untenable. The ability of an educator is not dependent upon his or her race.

The Department asserts that teacher experience and educational attainment are directly related to teacher proficiency. It has submitted no evidence to support this contention. Furthermore, the undersigned believes that it would be impossible for the Department to prove that

teachers with six to twelve years of experience are less proficient than teachers with more than twelve years of experience. In many instances, young teachers with only one to five years of experience and fresh new ideas might prove to be better teachers. These teachers have been over-assigned to schools with large and small minority student enrollments.

The Department has failed to show that minority school children are provided with an education that is any different from non-minority school children. No evidence has been presented which establishes an intent on the part of the School District to provide unequal educational opportunities for minority school children. Furthermore, no probative evidence has been submitted which establishes a discriminatory effect.

The undersigned is satisfied that the School District's policies and practices relating to the assignment of teachers on the basis of experience and educational attainment are squarely in compliance with Title VI of the 1964 Civil Rights Act, and implementing Regulations.[19] Furthermore, no violation of the Equal Protection Clause of the Fourteenth Amendment exists, as the Department has failed to show an invalid classification.

19. The School District's assignment policies in regard to teacher experience and educational attainment do not affect the undersigned's conclusion that it has purposely assigned teachers and professional staff on the basis of race in violation of Title VI.

C. VOLUNTARY COMPLIANCE EFFORTS

The Title VI regulations, 45 C.F.R. Part 80, state in part that:

> No order suspending, terminating or refusing to grant or continue Federal financial assistance should become effective until (1) The responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means .... 45 C.F.R. § 80.8 (c)

Thus, it must be determined whether or not the Department has made a valid effort or attempt to secure voluntary compliance.

I.

The School District was put on notice of the Department's policies on lingual education in 1970. See 35 Fed. Reg. 11595 (1970). In 1975 the Department issued and distributed copies of the "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols" to the School District. This report outlined guidelines for the School District, which if followed, would achieve compliance with Title VI. [20]

The record is replete with meetings between the Department and the School District, and offerings of technical assistance by the Department (Affidavit of Dr. Gonzalez at 6, 22, 23; and Affidavit of Alanson J. Sumner at 61-64). Furthermore, expert assistance has been offered to the School District at the Lau Center of Chicago State University. (Affidavit of Dr. Gonzalez at 22).

20. See note 3 supra.

In February 1976, the School District submitted a plan to achieve equal educational opportunity to non- or limited-English speaking national origin minority students.[21] The Department accepted the goals of the District, but rejected as inadequate the means. The plan was submitted by the Department to noted independent educational experts for their appraisal. The Department officials responsible for pursuing voluntary compliance and the independent experts concluded that the plan was deficient in numerous aspects. (Affidavits of Dr. Gonzalez at 22-25; Alanson J. Sumner at 33-60, and Hernan LaFontaine at 2-5). Dr. Gonzalez, a noted expert, concluded:

> The plan simply failed to demonstrate the kind of operational details and administration procedures that would lead me to believe that the plan could actually be carried out. Moreover, whatever efforts the district did carry out could neither be monitored, measured for their effectiveness, or allocated in any relationship to where need existed. Hence even if the District was willing to commit the necessary money, personnel, time,

21. 45 C.F.R. § 80.4 (c) states that the "responsible Department Official" must determine the adequacy of any desegregation plan; he determines whether the plan will accomplish the purposes of the Act and put the Respondent into compliance. The Reviewing Authority in Wilkes County Board of Education, CR-595, filed Sept. 2, 1969, specifically addressed itself to whether an Administrative Law Judge can make a direct determination as to the adequacy of a desegregation plan. It stated that the Administrative Law Judge bears the responsibility only of determining whether or not there is present actual compliance. The Reviewing Authority reasoned that the promise of a plan to assure future compliance properly relates to whether the Department has made valid efforts to secure voluntary compliance.

The undersigned believes that the Reviewing Authority's interpretation of 45 C.F.R. § 80.4 (c) is squarely in conflict with the Administrative Procedures Act (APA), 5 U:S.C. § 556. It is the presiding officer's function to consider all relevant, nonrepetitive, material and nonprejudicial evidence and render a fair and impartial decision. The Reviewing Authority cannot limit the Administrative Law Judge's jurisdiction under the APA by prohibiting direct review of a plan and allowing only indirect review on the voluntary compliance issue.

The undersigned does, however, firmly believe that the February 1976 plan is inadequate and will not place Respondent in compliance with Title VI.

> etc., there was nothing to suggest the District would put its resources to good use. Certainly nothing the District had done in the past in its disjointed program efforts served to allay these concerns. All of us at the Lau Center were very disappointed with the plan, I believe we had no choice but to recommend to OCR that it not accept the 'Special Instructional Services ...' portion of the plan." (Affidavit of Dr. Gonzalez 23-24).

Hernan LaFontaine, Executive Administrator of the Center for Bilingual Education of New York City, commented:

> Based on my experience as an administrator of programs and teacher of linguistic minority children for more than twenty years, it is my opinion, after careful review, that the February 8 Plan is insufficient in several respects and does not contain enough information to permit OCR to assess whether: (i) The Board is, in fact, meeting the educational needs of those children with Lau rights; and, (ii) the future plans of the Board are sufficient for purposes of Lau." (Affidavit of Hernan LaFontaine at 2).

It is clear from a review of the record that the Department has made reasonable attempts or efforts to secure voluntary compliance. It has provided adequate guidelines in those areas in which the School District has been deficient, made available technical assistance and rejected on reasonable grounds the February 8, 1976 Plan.

II.

The School District has had notice since 1964 that patterns of faculty and professional staff assignment have resulted in minority teachers being heavily concentrated in schools with predominantly minority student enrollment. (Exhibit A-No. 1 at 3, 16, 30, 31; Exhibit A-No. 2 at 157-66, 169-171, 340-370, 371-3; Exhibit A-No. 3 at 10-11, 13, 14; Exhibit A-No. 5 at A-3-4, 19-20; Exhibit A-No. 6 at 2, 3, 10-16, 22-24, 25-27, Appendix I; Exhibit A-No. 9 at 3, 6-7, 9-22; Exhibit A-No. 18; Exhibit A-No. 20; Exhibit A-No. 21; Exhibit A-No. 23; Exhibit A-No. 24 at 1-2; Exhibit A-No. 25 at 1; Exhibit A-No. 27 at 1-3; Affidavits of Bacon at 4-19, Rich at 13; First Admissions at 76-168).

The record is replete with good faith offerings of technical assistance by the Department and of meetings between officials of the Department and School Board.

Furthermore, the record shows that the Department closely, carefully and reasonably scrutinized the School District's February 1976 plan to achieve racial balance in its schools.[22]

As with the lingual services issue, the undersigned concludes that the Department has made reasonable efforts to secure voluntary compliance.

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22. See note 21 supra.

D. FEDERAL FUNDING

The evidence clearly reflects that the School District is not in compliance with Title VI as to its lingual services programs for non- or limited-English speaking national origin minority school children and assignment of teachers and professional staff. As such, the question arises as to whether Respondent School District is entitled to receive Federal financial assistance.

§ 602 of Title VI (42 U.S.C. § 2000d-1) states in pertinent part:

> Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure, to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found... .

The above cited statute was construed in 1969 in Board of Public Instruction of Taylor County, Florida v. Finch, 414 F.2d 1068 (5th Cir. 1969). In that case, an HEW Hearing Examiner ruled that the Taylor County School Board was in violation of Title VI and no longer entitled to Federal funds. The Reviewing Authority adopted the Hearing Examiner's Order with slight modifications. None of the findings of the Hearing Examiner or Reviewing Authority were programmatically oriented; in otherwords all classes of Federal funds were terminated carte blanche. The Taylor County Court held that:

> If the funds provided by the grant are administered in a discriminatory manner, or if they support a program which is infected by a discriminatory environment, then termination of such funds is proper. 414 F.2d at 1078. (underlining for emphasis only).

The Court similarly reasoned that wholesale termination of funds without particularized findings as to which programs were "infected" was clearly violative of § 602.

The Reviewing Authority has construed the term "infected" liberally. In Jasper Independent School District, CR-774 (Sept. 22, 1970), the Reviewing Authority held that Federal funds earmarked for a general elementary and secondary program may be terminated without a specific finding that the Federal funds are intertwined with the discrimination taking place within the general elementary and secondary program. It stated in this regard:

> Hence, if there is a finding that the general elementary and secondary educational program is being operated unconstitutionally, then the termination order can be inclusive enough to cut off all Federal grants which help finance this general program. CR-774 at 5.

Conversely, the Reviewing Authority recognized that programs which provide services to a special group of students (special and adjunct educational programs) must be scrutinized with particularity and those programs not infected or administered with discrimination must be excluded from a termination order.

In Big Spring Independent School District, S-61 (July 31, 1976), the Reviewing Authority stated that discrimination, either direct or infectious, in the administration of special programs must be specifically proven before such funds can be terminated. It further stated:

> Merely to show discrimination within the operation of a school district's general elementary and secondary educational program will not suffice to invoke the infection theory to include and affect special and adjunct programs. (See our decision and rulings in Tupelo Municipal Separate School District Mississippi, CR-690, September 24, 1970 and Jasper Independent School District, Texas, CR-774, September 22, 1970). To invoke the infection theory in special and adjunct programs, something more specific like direct evidence of deleterious effects, impact and results is required; infection cannot be blandly assumed as pervasive as it is in the case where there is discriminatory administration of programs directly supporting the general elementary and secondary educational program of a school district. (Id at 1,2).

Some months earlier, the Reviewing Authority had stated in the Big Spring case:

> An assumption by the Department that once duality is shown in some of the Respondent's schools, all programs are automatically infected, is far too broad a reading of the infection theory expressed in Taylor and interpreted in Jasper. Big Spring Independent School District, S-61 at 9 (Feb. 12, 1976).

The undersigned must accord considerable weight to the precedential value of Reviewing Authority decisions. Thus the distinctions drawn by the Reviewing Authority between general and special programs must be given significant importance.

The assignment of teachers and professional staff on the basis of race, which has been found to be discriminatory touches virtually every aspect of a student's school day. This discrimination adversely affects the entire elementary and secondary educational program where teachers and professional staff are assigned in the customary manner. Therefore, all Federal financial assistance which goes to the general elementary and secondary education program of the School District must be terminated. This means that programs under Title II of the Elementary and Secondary Education Act (ESEA), Library Assistance, 20 U.S.C. 821-827, Title III of the ESEA, National Defense Education Act, 20 U.S.C. 441-444, and Vocational Education 20 U.S.C. 1241-1355, 1391 must be terminated. [23]

It is well established that funds made available to school districts under Title I of the Elementary and Secondary Education Act (ESEA) of 1965, 20 U.S.C. 241a-244 must be used to provide for the special needs of educationally-deprived children. Big Spring, supra at 2 (July 31, 1976). The Reviewing Authority considers these funds as supporting special programs. The

23. The Reviewing Authority has determined that the programs administered pursuant to these Acts go to the general elementary and secondary program of a school system. Sparkman School District #37, S-65 (Oct. 7, 1976); Kinston Graded Schools, S-10 (Sept. 9, 1976); Big Spring Independent School District, S-61 (Feb. 12, 1976, July 31, 1976); and Marshall Independent School District, S-13 (July 30, 1976).

burden is on the Department to come forward with specific proof of discrimination in the administration of programs utilizing such funds or infection by a discriminatory environment. The Department has merely shown that some faculty and staff, who are assigned in a discriminatory fashion instruct or supervise many of these programs. The undersigned firmly believes that the Department has failed in its burden of proof because of lack of specifics or relationship to the discrimination in their request for carte blanche termination. Such programs as Home Visiting Instruction Team Program, Field Experiences, Outdoor Education and Camping, Family Guidance Center, School-Community Identification, Parent Involvement Program, Family Living Centers, Health Services, Extraordinary Services for Severely Handicapped Children, Public Information Center, Early Childhood Education, and Neglected or Delinquent Children (20 U.S.C 241c) have not been shown to be significantly infected with discrimination or administered in a discriminatory fashion. These programs are administered primarily independent of or outside of the regular classroom. As the Reviewing Authority stated in Big Spring, supra, merely to show discrimination within the operation of the general elementary and secondary educational program will not suffice to include and affect special and adjunct programs. The other Title I programs significantly touch students' in-class and in-school experiences. The assignment of teachers and staff in a discriminatory fashion directly affects these special and adjunct programs.

The other Federally funded programs scrutinized by the Department have not been determined by the Reviewing Authority to be either special or general in nature. Accordingly, each program must be analyzed firstly as to which classification it falls into and secondly whether or not Federal funding should be terminated.

The Respondent receives Federal funds pursuant to 20 U.S.C 1422, Title VI (ESEA). Three projects are sponsored by these Federal funds. Of the three projects, the Parent and Infant Education for Vision and Hearing Handicapped of the Great City, and Chicago Deaf-Blind projects are administered outside of the regular and secondary school program by selected professional staff. These projects are completely free of any inference of discrimination, therefore, they must be excluded from the termination order. The other project, Supplementary Education Services for the Handicapped, authorized under 20 U.S.C. 1422, is part of the general elementary and secondary program and must be terminated as it is infected with unlawful discrimination.

The School District receives Federal assistance for Title VII (ESEA) 20 U.S.C. 880b projects under the authorization of the Bilingual Education Act. All of these funds must be terminated as their administration is fraught with unlawful discrimination.

The School District receives Federal funds for Headstart-follow through programs, Title V, Part B, 42 U.S.C. 2929, and Child Development programs, Title V, Part A, 42 U.S.C. 2921 et. seq. The Headstart-Medical Program has not been shown to be either infected with discrimination or administered unlawfully. The staff for this program is specially assigned. Therefore, termination of funds for this program would be improper. The Headstart - Pre-Kindergarten Program and Follow Through-Supportive Services project, on the otherhand, have been shown to be provided in the general elementary program; therefore, termination of funding for these programs is proper.

The Respondent receives Federal assistance under authorization of the Education Professions Development Act, Title V, Part D, 20 U.S.C. 1111-1119a. The objective of this program is to provide comprehensive staff and teacher training. The funds utilized in this program must be terminated as they relate directly to unlawful discriminatory practices.

The Respondent receives Federal funding for a number of miscellaneous projects. Funds provided by the National Defense Act, 20 U.S.C. 441-444, and Vocational Education 20 U.S.C. 1241-1355, 1391 have already been determined to be infected and must be terminated. Of the miscellaneous programs, only one provides services to special students in special schools or in classes outside of schools; hence only the Indian Elementary and Secondary School Assistance Act program, Title IV (ESEA), Part A, 20 U.S.C. 241aa, can be determined to be a special or adjunct program. The objective of this program is to provide financial assistance to local educational agencies to develop and implement elementary and secondary school programs to meet the needs of Indian children. The discriminatory assignment of teachers clearly touches this program and affects the child's ability to learn. Therefore, Federal assistance received pursuant to 20 U.S.C. 241aa must be terminated.

The other miscellaneous projects must be classified as "general".[24] The denial of equal educational opportunities to non- or limited-English speaking children and the discriminatory assignment of teachers and professional staff adversely affects the entire elementary and secondary program and hence these general programs must be terminated.

24. These projects or authorizations include Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968, Part B, Title III, 42 U.S.C. 2681 et. seq. and related legislation; School Assistance in Federally Affected Areas, P.L. 81-874, 20 U.S.C. 236-241-1, 242-245; Surplus Property Utilization, P.L. 81-152, 40 U.S.C. 484; Talent search/ Upward Bound, P.L. 89-329, P.L. 90-575, 20 U.S.C. 1101; Teachers Corps, P.L. 89-329, 20 U.S.C. 1101-1107a; Environment Education, P.L. 91-516, P.L. 93-278, 20 U.S.C. 1531; Libraries and Learning Resources, ESEA Title IV, P.L. 89-10. P.L. 93-380, 20 U.S.C. 1801.

The School District also receives Federal assistance through the City of Chicago from the Department of Housing and Urban Development under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301, et. seq.) and Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et. seq.) Such financial assistance is utilized to pay salaries and expenses of teachers and principals and also to provide English language instruction to language handicapped students. It is obvious that these programs are directly infected with the discrimination found to exist in the assignment of teachers and professional staff and denial of equal educational opportunity to non- or limited-English speaking school children. Thus the Federal financial assistance administered by the Department of Housing and Urban Development under 42 U.S.C. § 3301, et. seq. and 42 U.S.C. § 5301, et. seq. must be terminated.

FINDINGS OF FACT

1. The Respondent Board of Education of the City of Chicago is a body politic and corporate organized and existing under state law, vested with the responsibility of operating the public school system of the City of Chicago.

2. The assignment of teachers and professional staff in the Chicago public school system is completely within the discretionary control and responsibility of the Chicago Board of Education and the General Superintendent of Schools acting for the School District under state law.

3. The Illinois Office of Education is an agency of the Government of the State of Illinois which is vested with responsibility for supervising the policy of and maintaining the systems of public elementary and secondary education which are operated by school districts in the state. In addition, it is the agency which receives, administers, and disburses funds granted to the state by agencies of the United States Government for educational purposes under various federal statutory grant programs administered by the Department and other federal agencies.

4. The City of Chicago is a body corporate organized and existing under the laws of the state of Illinois and is the agency of local government eligible to receive, administer, obligate and disburse funds granted by the Department of Housing and Urban Development and other federal agencies under various federal statutory grant programs.

5. In 1974, the Office for Civil Rights initiated a compliance review of the Respondent School District to determine whether it was complying with Title VI of the 1964 Civil Rights Act.

6. On October 6, 1975 the School District was notified by letter by the Director of the Office for Civil Rights that it was in violation of Title VI as to the issues of faculty and professional staff assignment and provision of special bilingual instructional services.

7. A Notice of Opportunity for Hearing was filed on April 9, 1976 wherein Respondents School District and State Agency were notified that they would be given an opportunity to be heard concerning the allegations of noncompliance with Title VI.

8. A Notice of Opportunity to Request a Hearing was filed on July 30, 1976 wherein the School District and City of Chicago were notified that they would be given an opportunity to be heard concerning allegations of noncompliance with Title VI.

9. On October 13, 1976, the School District submitted a Motion for Waiver of Hearing which was subsequently granted on October 27, 1976 and the case has therefore been decided upon the record of evidence as constituted on January 31, 1977.

10. The School District has a substantial number of national origin minority school children who speak little or no English.

11. Approximately 31,000 non- or limited-English speaking national origin minority children receive neither bilingual education nor ESL training.

12. The School District has failed to adequately identify and assess its national origin minority school children who have language handicaps.

13. Without adequate identification and assessment procedures the School District cannot accurately allocate its resources or determine the needs of these children.

14. The School District's assertion of assigning, hiring or transferring numerous bilingual teachers to provide bilingual services is unsubstantiated in the record.

15. The School District's auxiliary and supportive services provided in lieu of bilingual classes and ESL training are not adequate to meet the needs of non- or limited-English speaking national origin minority children.

16. Statistical analyses reveal that minority faculty are over-assigned or over-represented in regular elementary and high schools with 95% or greater minority student composition.

17. Chi-square analyses indicate that the probability of teacher assignment being independent of race is less than one chance in a million for each year 1968-1975.

18. A Goodness of Fit Test revealed a significant deviation between particularized school's faculty racial composition and the district-wide racial composition.

19. 34.2% of the schools which opened in 1971 had faculties whose racial composition were outside of the 25-75% Redmond Plan, and the evidence establishes that by 1975, 46% of those schools were outside of the 25-75% Redmond Plan.

20. A Regression Analysis revealed that as minority student enrollment increases in a school minority faculty likewise increases.

21. Multiple Curvilinear Regression Analysis showed a strong positive correlation between the percentage of minority student enrollment and the percentage of minority faculty assigned to elementary and high schools.

22. It is possible to predict the racial composition of the student body of a school in the City of Chicago based upon the ethnicity of its faculty.

23. The race of a teacher or professional staff member is a critical factor in his or her assignment.

24. The Respondent School Board followed community pressure to exclude teachers and principals from certain schools on the basis of race.

25. The School District purposely limited the opportunities of minority group teachers and principals to certain primarily minority schools.

26. The permissive practice of allowing teachers and principals to arrange assignments or appointments likewise contributed to racially identifiable faculties.

27. Statistical analyses revealed that teachers with one to five years experience were under-represented in schools with large and small minority student enrollment.

28. Teachers with six to twelve years of experience were generally over-represented in schools having 95-100% minority student enrollment.

29. Teachers with over twelve years of experience were generally over-represented in schools having a small proportion of minority students.

30. Teachers with at least a Masters degree are generally over-represented in schools with few minority students.

31. The ability of an educator is not dependent upon his or her race.

32. No evidence has been presented by the Department to establish that teachers in minority schools are less proficient than teachers in non-minority schools.

33. The Department has provided adequate guidelines in those areas in which the School District has been deficient, made available technical assistance, and rejected on reasonable grounds the School District's February 13, 1976 plan.

34. The School District is a recipient of Federal funds from the Department of Health, Education and Welfare and Department of Housing and Urban Development.

35. Federal financial assistance from the Department applied for and/or received by the School District under the following authorizations are either administered in a discriminatory manner or support programs which are infected by a discriminatory environment:

(a) Education of Children of Low-Income Families, Title I of ESEA, Parts A-C, 20 U.S.C. 241a-m, with the exception of:

The projects or programs entitled Home Visiting Team, Field Experiences, Outdoor Education and Camping, Family Guidance Center, School-Community Identification, Parent Involvement, Family Living Centers, Health Services, Extraordinary Services for Severely Handicapped Children, Public Information Center, Early Childhood Education and Neglected or Delinquent Children.

(b) School Library Assistance, Title II of ESEA, 20 U.S.C. 821-827.

(c) Educational guidance counseling Title III, ESEA, 20 U.S.C. 841, with the exception of:

The projects or programs entitled Operation Impact and Homebase.

(d) Education of the Handicapped Act, Title VI, ESEA, 20 U.S.C. 1422, with the exception of:

The projects entitled Parent and Infant Education for Vision and Hearing Handicapped and Chicago Deaf-Blind.

(e) Bilingual Education Act, Title VII, ESEA, 20 U.S.C. 880b.

(f) Headstart-follow through, Title V, Part B, 42 U.S.C. 2929.

(g) Child Development, Title V, Part A, 42 U.S.C. 2921 et. seq., with the exception of:

The program entitled Headstart-Medical.

(h) Education Professions Development Act, Title V, Part D, 20 U.S.C. 1111-1119a.

(i) Strengthening Instruction in Critical Subjects, Title III of NDEA, 20 U.S.C. 441-444.

(j) Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968, Part B, Title III, 42 U.S.C. 2681 et. seq. and related legislation.

(k) Indian Elementary and Secondary School Assistance, Title IV, Part A, 20 U.S.C. 241aa.

(l) School Assistance in Federally Affected Areas, P.L. 81-874, 20 U.S.C. 236-241-1, 242-245.

(m) Vocational Education, 20 U.S.C. 1241-1355, 1391.

(n) Surplus Property Utilization, P.L. 81-152, 40 U.S.C. 484.

(o) Talent search/Upward Bound, P.L. 89-329, P.L. 90-575, 20 U.S.C. 1101.

(p) Teachers Corps, P.L. 89-329, 20 U.S.C. 1101-1107a.

(q) Environment Education, P.L. 91-516, P.L. 93-278, 20 U.S.C. 1531.

(r) Libraries and Learning Resources, ESEA Title IV, P.L. 89-10. P.L. 93-380, 20 U.S.C. 1801.

36. Federal financial assistance from the Department of Housing and Urban Development under the following authorizations are either administered in a discriminatory manner or support programs which are infected by a discriminatory environment:

(a) Title I of the Demonstration Center and Metropolitan Development Act of 1966 (42 U.S.C. 3301, et. seq.).

(b) Title I of the Housing & Community Development Act of 1974 (42 U.S.C. 5301, et. seq.).

CONCLUSIONS OF LAW

1. The Administrative Law Judge by virtue of his designation has full authority to preside over all proceedings in this matter and to issue an Initial Decision herein.

2. The School District has failed to take the affirmative steps necessary to open its instructional program to its non- or limited-English speaking national origin minority school children in violation of Lau v. Nichols, 414 U.S. 560 (1974) and Title VI of the Civil Rights Act of 1964.

3. The School District has violated Title VI of the Civil Rights Act of 1964 by failing to adequately identify and assess its national origin minority students.

4. The School District's assessment and identification efforts have restricted non- or limited-English speaking national origin minority children from enjoying the benefits of the School District's educational programs in violation of Title VI.

5. The School District is not addressing the needs of approximately 31,000 children enrolled in the School District in violation of Title VI.

6. To separate minority school children from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. Brown v. Board of Education, Topeka, 347 U.S. 483 (1954).

7. Two elements must be shown for a finding of actionable de jure segregation: (1) that action or failure to act by responsible school authorities in regard to problems or practices related to segregation was taken with segregative intent and (2) that the action or failure to act, has resulted in creating, continuing or increasing the segregation which exists in the school system. Washington v. Davis, 96 S.Ct. 2040 (1976), Milliken v. Bradley, 418 U.S. 717 (1974), Keyes v. School District No. 1, Denver, 413 U.S. 189 (1973), and Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

8. Intent or purpose to discriminate may be either express or inferred. Village of Arlington Heights v. Metro Housing Dev. Corp., 97 S.Ct. 555 (1977), Austin Independent School District v. United States, 97 S.Ct. 517 (1976), and Washington v. Davis, 96 S.Ct. 2040 (1976).

9. The School District's consciously consummated actions or omissions in regard to the assignment of teachers and professional staff which has resulted in racially identifiable faculties, raises a normal inference of intent to separate the faculties on the basis of race.

10. The School District purposely assigned teachers and professional staff to certain schools on the basis of race.

11. The cumulative effect of the actions or omissions of the Chicago Public School officials has been to isolate black administrators, black teachers and black students in a limited number of schools and increasingly to isolate another number of schools with almost exclusively white administrators, white teachers and white students.

12. The responsibility for assignment patterns of teachers and professional staff which made for racially identifiable schools is that of the Respondent School District not of the teachers or personnel being assigned.

13. Under both the Constitutional and the Title VI standard minority school children have been deprived of their right to be educated in a system operated free of racial discrimination in that assignment policies and practices of Chicago Public School officials have made for the racial identifiability of schools as intended for students of a particular race.

14. No correlation between the level of teacher experience at a particular school and the quality of educational service delivered to the students of that particular school has been presented. Accordingly, there is no violation of the Fourteenth Amendment of the Constitution or Title VI of the 1964 Civil Rights Act in regard to the quality of educational services delivered to minority students.

15. No evidence has been presented to establish that teachers in minority schools have lesser levels of teaching experience which affects their proficiency. Accordingly, no violation of the Fourteenth Amendment to the Constitution or Title VI of the 1964 Civil Rights Act exists as to the quality of educational services delivered to minority students.

16. The Department has been unable to secure voluntary compliance of Respondent School District. The Department rejected on reasonable grounds the School District's February 13, 1976 plan, has provided adequate guidelines in those areas in which the School District has been deficient, and has made available technical assistance.

17. The School District is not in compliance with Title VI of the 1964 Civil Rights Act in regard to its teacher and professional staff assignments and delivery of equal educational opportunities to non- or limited-English speaking national origin minority school children.

ORDER

IT IS HEREBY ORDERED THAT:

1. Federal financial assistance administered by the Department of Health, Education and Welfare under the following authorizations shall be terminated and refused to be granted or continued to the Respondent School District:

(a) Education of Children of Low-Income Families, Title I of ESEA, Parts A-C, 20 U.S.C. 241a-m, with the exception of:

The projects or programs entitled Home Visiting Team, Field Experiences, Outdoor Education and Camping, Family Guidance Center, School-Community Identification, Parent Involvement, Family Living Centers, Health Services, Extraordinary Services for Severely Handicapped Children, Public Information Center, Early Childhood Education and Neglected or Delinquent Children.

(b) School Library Assistance, Title II of ESEA, 20 U.S.C. 821-827.

(c) Educational guidance counseling Title III, ESEA, 20 U.S.C. 841, with the exception of:

The projects or programs entitled Operation Impact and Homebase.

(d) Education of the Handicapped Act, Title VI, ESEA, 20 U.S.C. 1422, with the exception of:

The projects entitled Parent and Infant Education for Vision and Hearing Handicapped and Chicago Deaf-Blind.

(e) Bilingual Education Act, Title VII, ESEA, 20 U.S.C. 880b.

(f) Headstart-follow through, Title V, Part B, 42 U.S.C. 2929.

(g) Child Development, Title V, Part A, 42 U.S.C. 2921 et. seq., with the exception of:

The program entitled Headstart-Medical.

(h) Education Professions Development Act, Title V, Part D, 20 U.S.C. 1111-1119a.

(i) Strengthening Instruction in Critical Subjects, Title III of NDEA, 20 U.S.C. 441-444.

(j) Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968, Part B, Title III, 42 U.S.C. 2681 et. seq. and related legislation.

(k) Indian Elementary and Secondary School Assistance, Title IV, Part A, 20 U.S.C. 241aa.

(l) School Assistance in Federally Affected Areas, P.L. 81-874, 20 U.S.C. 236-241-1, 242-245.

(m) Vocational Education, 20 U.S.C. 1241-1355, 1391.

(n) Surplus Property Utilization, P.L. 81-152, 40 U.S.C. 484.

(o) Talent search/Upward Bound, P.L. 89-329, P.L. 90-575, 20 U.S.C. 1101.

(p) Teachers Corps, P.L. 89-329, 20 U.S.C. 1101-1107a.

(q) Environment Education, P.L. 91-516, P.L. 93-278, 20 U.S.C. 1531.

(r) Libraries and Learning Resources, ESEA Title IV, P.L. 89-10. P.L. 93-380, 20 U.S.C. 1801.

2. Federal financial assistance administered by HUD under the following authorizations shall be terminated and refused to be granted or continued to Respondent School District:

(a) Title I of the Demonstration Center and Metropolitan Development Act of 1966 (42 U.S.C. 3301, et. seq.).

(b) Title I of the Housing & Community Development Act of 1974 (42 U.S.C. 5301, et. seq.).

3. Additional Federal financial assistance for which Respondent School District would be eligible to apply for and receive, either directly from HEW or through the Illinois Office of Education, but for its noncompliance with Title VI and the Fourteenth Amendment, are to be refused to be granted.

4. This termination and refusal to grant or continue Federal financial assistance shall remain in force until Respondent School District corrects its noncompliance with Title VI and the Fourteenth Amendment, and satisfies the Director, Office for Civil Rights, HEW that it is in compliance.

5. This Initial Decision and Order shall become final unless, within 20 days after mailing of the Initial Decision and Order, any party submits exceptions to the Reviewing Authority (Civil Rights) of HEW in accordance with 45 C.F.R. 81.103.

DATE: FEB 15 1977

Everett J. Hammarstrom

EVERETT J. HAMMARSTROM
Administrative Law Judge